IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/08/2002

CORAM

THE HON'BLE MR. JUSTICE K. SAMPATH

S.A.No.1971 of 1989 and S.A. No.1972 of 1989
and S.A. Nos. 1973 and 1974 of 1989

N. Chelliah Servai,
S/o Nellathambi Servai,
Thambipatti,
Thirupattur,
Pasumpon Muthuramalingam
District. ... Appellant in all
the S.As.

-Vs-

The Executive Authority,
Thirupattur Town Panchayat
Office,
Thirupattur,
Pasumpon Muthuramalingam
District. ... Respondent in all
the S.A.

For Appellant: ... Mr.S. Natarajan

For Respondent: ... Mr.C. Thirumaran for
Mr.S. Mohamed Yousuf

These second appeals are filed against the judgment and decree dated 28-9-1989 made in A.S.Nos.158/86, 146/86, 147/86 and 157/86 respectively, on the file of the Subordinate Judge, Sivaganga.

:JUDGMENT
The following substantial questions of law have been framed for decision in the second appeals:

"1. For assessing the value of the property for the purpose of house tax, should not the Authorities determine fair rent for the building applying the provisions for arriving at the fair rent under the Rent Control Act?

2. Can the increased tax be demanded with retrospective effect?

3. Should not the executive Authority give the reasons in Exs.A-1 to A-5 for increasing the house tax, to enable the plaintiff to avail the remedy provided to be effectively utilised?

2. Contending that the Executive Authority, Thirupattur Panchayat, had increased the annual value of the various buildings belonging to him and correspondingly the property tax, the appellant filed the suits before the District Munsif's Court, Thirupattur, seeking a declaration that the increase in tax was not valid and for injunction restraining the defendant Panchayat from collecting the tax at the revised rate.
There were five special notices for increase of house tax issued under Rule 9(3) of the Rules framed under Section 112(2) of the Madras Village Panchayat Act, 1950. O.S.No.234/83 relates to notice for Door No.7/8-1; O.S.No.235/83 is for Door No.7/8-2; O.S.No.236/83 relates to Door No.7/8-3; and O.S.No.237/83 relates to Door No.7/8-4. The notices were marked as Exs.A-1 to A-5 respectively before the trial Court. It was contended that the respondent had no power to fix the value of the building and tax arbitrarily and that the principles for fixing the fair rent under the Rent control Act had to be applied and as the respondent had not followed the procedure, the suits came to be filed.

3. The trial Court accepted the case of the appellant and decreed the suits and the notices were set aside. The respondent Panchayat filed appeals A.S.Nos.146, 147, 157 and 158 of 1986 before the Sub Court, Sivaganga. The learned Subordinate Judge, by common judgment allowed the appeals and dismissed the suits. It is as against the said dismissal, the present second appeals have been filed.

4. The learned Counsel for the appellant Mr.S. Natarajan submitted by relying on several decisions of the Supreme court and this Court that the notices issued by the respondent have been so issued arbitrarily without bothering to fix the annual value on the basis of the fair rent obtainable on the various items. According to the learned Counsel, none of the notices gives any reason for increase in the annual value and for consequent increase in the tax.

5. Except for one notice, all the other notices give the reason for increase as the increase in the rent received by the appellant. The notices further say that the appellant could within 30 days from the receipt of notice file his objections to the revision before the same authority. The appellant did not go before the respondent but chose to approach the Civil Court. The learned Subordinate Judge, while allowing the appeals filed by the respondent observed as follows:

"That the notices clearly mentioned that there was revision in the rent received by the appellant in respect of each of his properties, that in any event, the notices clearly stated that the appellant could approach the respondent within a month and without approaching the respondent, he had gone to the Civil Court."

and this would be clear from the notices themselves. Only on this short

ground, the appeals were allowed. The Panchayat had a resolution passed and pursuant to the resolution, the notices had been issued. The appellant had not approached the Panchayat within the stipulated 30 days. Notices Exs.A-1 to A-5 are all dated 7-6-1983 and the plaintiff within 30 days from the receipt of notices, should have approached the respondent; instead he filed the suits on 8-8-1983.

6. In my view, it cannot be construed that the respondent had arbitrarily revised the annual valuation and consequently the tax payable by the appellant. The notices are in the nature of show cause having regard to the fact that the appellant had revised the rent he was receiving from his tenants.

7. Let us now refer to the various decisions relied on by Counsel.
In THE GUNTUR MUNICIPAL COUNCIL VS. THE GUNTUR TOWN RATEPAYERS' ASSOCIATION, ETC.(1971(II) MLJ (SC) 7) which arose under the Madras District Municipalities Act, Act V of 1920, the Supreme Court held interpreting Section 82(2) of the Madras District Municipalities Act that,

"the provisions for the fixation of annual value according to the rent at which lands and buildings may reasonably be expected to be let from month to month or from year to yea less the specified deduction and that the test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The Municipality is thus not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Rent control Act in force. In this respect no distinction can be made between buildings the fair rent of which has been actually fixed under the Rent Control Act and those in respect of which no such rent has been fixed."

That was a case where there was a general revision of the rental values of the houses and the buildings effected by the Guntur Municipality in the year 1960 for the purpose of assessment of tax and suits were filed for a declaration that such general revision was ultra vires and illegal and for a consequential relief of a permanent injunction restraining the Municipality from acting on the said notices issued to the tax payers. It was found that the Guntur Municipality had not followed the fair rent procedure contemplated under the corresponding Rent Control Act and ultimately, the decrees granted by the Courts below were modified by the Supreme Court by declaring that the general revision made by the Guntur Municipality by increasing the rental valuation of houses and buildings beyond the fair rent determinable under the Rent control Act in force for the period of assessment was illegal and ulta vires and a permanent injunction was issued restraining the Municipality from realising any amount in excess of such tax which might be found due on the valuation fixed according to the principles laid down in the judgment.
The Supreme Court stressed that the assessment of valuation must take into account the measure of fair rent as determinable under the Act and it may be that where the Controller has not fixed the fair rent the municipal authorities will have to arrive at their own figure of fair rent but that can be done without any difficulty by keeping in view the principles laid

down in the Rent Control Act for determination of fair rent. The Supreme Court also expressed that the procedural difficulties should not stand in the way. "When it comes to fixing the annual value, the law is and appears to be well settled that the assessment of valuation for the purpose of tax must be made in accordance with and in the light of the provisions of the Rent Act in force during the period of assessment."

8. In S. RAMASWAMY VS. THE COMMISSIONER, CORPORATION OF MADRAS (197 7(II) MLJ 457) a learned Judge of this Court observed as follows:

"Wherever buildings are subject to rent control restriction, the rental value has to be fixed with reference to the fair rent if any, fixed under the statutory provisions for the building and if no fair rent has been fixed by the Rent Controller the municipal authorities have to apply the provisions of the Rent control Act and determine the fair rent for the building before assessing the property to tax."

9. In NEW DELHI MUNICIPAL COMMITTEE VS. M.N. SOI AND ANOTHER (AIR 1 977 SC 302) it has been held that,

"where a rent is higher than that which can be legally demanded by the landlord and actually paid by a tenant despite the fact that such violation of the restriction on rent chargeable by law is visited by penal consequences, the Municipal authorities cannot take advantage of this defiance of the law by the landlord. Rating cannot operate as a mode of sharing the benefits of illegal rack-renting indulged in by landlords for whose activities the law prescribes condign punishment."

10. The decision in K.M.S. ABDUL HASAN VS. THE TIRUVARUR MUNICIPALITY (1978(I) MLJ 121) reiterates the same principles. It was found in that decision that the Commissioner of the Municipality concerned had arbitrarily fixed, though in a bona fide manner the reasonable rent that the properties would fetch and that the rental value had not been arrived at in conformity with the proper principles applicable.

11. In DEVAN DAULAT RAI KAPOOR ETC. ETC. VS. NEW DELHI MUNICIPAL COMMITTEE AND ANOTHER (AIR 1980 SC 541) the same principle is reiterated.

"Where a building %is governed by the provisions of Rent Control Legislation the landlord cannot reasonably be expected to receive anything more than the standard rent from a hypothetical tenant and the annual value of the building cannot therefore exceed the standard rent. Even in case of a building in respect of which no standard rent has been fixed within the prescribed period of limitation and thus the tenant is precluded from making an application for fixation of standard rent with the result that landlord is lawfully entitled to continue to receive the contractual rent, the annual value must be limited to the measure of standard rent determinable under the Rent Act and cannot be determined on the basis of the higher rent actually received by the landlord from the tenant. Even if the standard rent has not been fixed by the controller, the landlord cannot reasonably expect to receive from a

hypothetical tenant anything more than the standard rent determinable under the Act and this would be so equally whether the building has been let out to a tenant who has lost his right to apply for fixation of the standard rent or the building is self-occupied by the owner. The assessing authority would, in either case, have to arrive at its own figure of the standard rent by applying principles laid down in the Delhi Rent Control Act, 1958 for determination of standard rent and determine the annual value of the building on the basis of such figure of standard rent."

12. In THE MUNICIPAL COUNCIL TIRUVARUR VS. TAJ PRAKASHA THAIKAL ESTATE (1981(1) MLJ 197) the Municipality had not complied with the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act and assessed the annual value for the purpose of municipal tax without recourse to the Rent Control Act and this Court quashed the notice.
13. In MAGDOOM SHERIFF @ SULTAN SHERIFF VS. KANCHEEPURAM MUNICIPALITY (1993(2) MLJ 262), a learned Judge has followed the same ratio as in the earlier cases.
14. In INDIA AUTOMOBILES (1960) LTD. VS. CALCUTTA MUNICIPAL CORPORATION AND ANOTHER (2002(3) SCC 388) the Supreme Court observed as follows:
"The basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as indicated in the judgment including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of the Supreme Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of the provisions of the Act concerned."

In that case, the Supreme Court referred to all the earlier cases and evolved a formula for fixing the annual rental value.

15. The Supreme Court categorised the earlier decisions into two groups, one group dealing with the municipal laws of some States which do not expressly include application of the Rent Restriction Acts in the matter of determination of annual value of building for the purposes of levying municipal taxes and the other group dealing with the municipal laws which expressly exclude application of the Rent Restriction Acts in the matter of determination of annual value of land or building on rental method. Whereas in the first category of cases the determination of annual value has to be made on the basis of fair or standard rent notwithstanding the actual rent, even if it exceeds the statutory limits. In the other group where the restriction in the Rent Acts has been excluded, the determination of annual value of the building on rental method is referable to the method provided

under the relevant Municipal Act.
16. It has to be noted that none of the cases referred to above relates to determination of fair rent in the Panchayats where the Rent Acts are not made applicable. There does not appear to be any decided case on the point.

17. The decision in K. JAYAPRAKASH VS. THE EXECUTIVE AUTHORITY TIRUTHANGAL TOWN PANCHAYAT (1982(1) MLJ 18 = 92 LW 609) arose under the Panchayat Act, 1958. That was a case when the Executive Authority of the Town Panchayat issued a special notice of house tax amendment under Rule 10(3) of the Rules issued under Tamil Nadu Panchayats Act, 19 58 without disclosing the reasons, which prevailed for making a special revision. The learned Judge held that,

"Rule 10(3) enables the Executive Authority to make a special revision of house tax, but it can be done only after intimating by a special notice to the owner or occupier of the house that the petition for revising the assessment will be considered, if it reaches the Panchayat Office within 30 days from the date of service of such notice."

According to the learned Judge, it is not sufficient to merely issue a special notice staightaway to enhance the tax unless the representations made by the petitioner opposing the proposed enhancement of tax had been considered and disposed of. The notice served on the petitioner in that case did not state the grounds which prevailed upon the executive authority to revise the tax demands and in the absence of such disclosure, as held in DALAVAI VS. GOVERNMENT OF TAMIL NADU (197 8(1) MLJ 93), whenever special notice is issued, it is obligatory on the part of the concerned tax authority to disclose the reasons arrived at therein. The learned Judge further held that,

"when the rules themselves provide for a revision petition, unless the assessee knows the grounds on which enhancement has been made, it would not enable him to prefer effectively a revision petition and that remedies provided under the Rules or enactments cannot be reduced to in effectiveness. To make them effective and purposeful remedies, particularly when an appeal or revision is provided, it is incumbent on the original authority to state the reasons for the conclusion arrived at. Therefore, it is all the more necessary for the executive authority to furnish the reasons, so that the remedy provided under the Rules could be effectively and successfully utilised by affected parties."

The learned Judge remitted the matter to enable the respondent to deal with the matter afresh by passing an order justifying the enhancement. This is the only decision relating to enhancement of property tax dealt with by a Panchayat. Admittedly, Rent Control Acts have not been made applicable to the Panchayat in question.

18. We have therefore to find out whether the special notice disclosed any reason for enhancement. Except for Ex.A-2, the other notices have given the reason for enhancement as increase in rent by the landlord. It is further provided in the various notices that the landlord could approach

the same authority for raising his objections questioning the enhancement. This has not been done by the appellant at all. Instead, he rushed to the Court as already noted.

19. The matter has been pending for nearly 20 years in the Court, with the result that there has been no subsequent quinquennial revisions. Pending the second appeals, as an interim measure where the enhancement had doubled, the appellant had been directed to pay 50% of the revised tax and in other cases where the increase was negligible, he had been directed to pay the full tax. Because of the pendency of the appeals, the Panchayat had not embarked on quinquennial revisions. As already noted, the appellant should have approached the respondent itself by filing his objections within a period of 30 days.

20. The case decided in K. JAYAPRAKASH VS. THE EXECUTIVE AUTHORITY, TIRUTHANGAL TOWN PANCHAYAT (1982(1) MLJ 18) is clearly distinguishable. That was a case where tax had been enhanced without any reasons being disclosed and the appellant was directed to approach the revisional authority within 30 days. This is a case where some reasonhad been given and the appellant was directed to approach the same authority by filing his objections to the revision.

21. It would be worthwhile to extract the observations of the Supreme Court made in SRIKANT KASHINATH JITURI VS. CORPORATION OF THE CITY OF BELGAUM (1994(6) SCC 572), which is as follows:

"We feel compelled to express our doubts as to the soundness and continuing relevance of the view taken by this Court in several earlier decisions that the property tax must be determined on the basis of fair rent alone regardless of the actual rent received. Fair rent very often means the rent prevailing prior to 1950 with some minor modifications and additions. Property tax is the main source of revenue to the municipalities and municipal corporations. To compel these local bodies to levy and collect the property tax on the basis of fair rent alone, while asking them at the same time to perform all their obligatory and discretionary functions prescribed by the statute may be to ask for the impossible. The cost of maintaining and laying roads, drains and other amenities, the salaries of staff and wages of employees – in short, all types of expenditure have gone up steeply over the last more than forty years. In such a situation, insistence upon levy of property tax on the basis of fair rent alone – disregarding the actual rent received – is neither justified nor practicable. None of the enactments says so expressly. The said principle has been evolved by Courts by a process of interpretation. Probably a time has come when the said principle may have to be reviewed." (emphasis supplied)

22. By filing the suits and keeping the matter pending for nearly 20 years, the Panchayat has been put to enormous loss. At least with regard to three cases where the revision was very nominal, the appellant should have refrained from taking recourse to civil proceedings. Where the revision has been 7 or 8 times the original assessment which incidentally it

must be noted was in 1969-70, the appellant should have gone before the respondent and raised his objections as contemplated under the provisions of the Panchayat Act. As rightly pointed out by Mr. Thirumaran, the learned Counsel for the first respondent, the appellant nowhere stated that the Rent Control Act had not been followed.

23. In DINDIGUL ANNA DISTRICT TAX PAYERS SANGAM ETC. VS. GOVERNMENT OF TAMIL NADU ETC. & ANOTHER (1994(2) LW 715 = 1994 Writ L.R. 805), it has been held that the special notice served by the Executive Authorities of the Municipalities under Rule 9 on the owners and occupiers of properties was held to be not in accordance with the principles laid down by this Court as no reason was stated in the special notices for enhancement of property tax and therefore the special notices could not be sustained and the notices were quashed. The Bench directed the Municipalities in question to issue fresh special notices under Rule 9 to the assesses giving reasons for the enhancement of the property tax and it further stated that on receipt of such notices, it was open to the members of the petitioners to file their objections or apply for revision of the proposed enhancement. The appellant cannot say that no reason at all was given in the present case.

24. As already pointed out, except for one, all the other notices have given the reason for enhancement. The appellant ought to have approached the authority and the same not having been done, I do not find any acceptable ground for allowing the second appeals. The substantial questions of law do not at all arise for consideration. The second appeals fail and they are dismissed. However, there will be no order as to costs.

23-8-2002
Index: Yes
Internet: Yes

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To

1. The Subordinate Judge,
Sivaganga (with records).

2. The District Munsif,
Sivaganga.

3. The Record Keeper,
V.R. Records,
High Court,
Madras.

K. SAMPATH, J.

Judgment
in

S.A.Nos.1971 to 1974/89